

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.1677 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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NEW INDIA ASSURANCE CO. LTD.

Versus

HEIRS OF DECD. BIKHUBHAI LAKHMAN

Appearance:

1. Special Civil Application No. 1677 of 2002
MR PV NANA VATI for Petitioner No. 1
MR VIBHUTI NANA VATI for Petitioner No. 1
..... for Respondent No. 1
MR RC KAKKAD for Respondent No. 1/1-1/2
MR ANSHIN H DESAI for Respondent No. 2
DELETED for Respondent No. 3
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CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 25/06/2002

ORAL JUDGEMENT

The petitioner, the New India Assurance Co. Ltd. has challenged, by of this petition, order dated 10-01-2002 passed in Claim Darkhast No.27 of 2001 holding the petitioner liable for satisfying the award dated

10-09-1999 made on application under Section 140 of the Motor Vehicles Act, 1988 (the 'Act' for short) filed in Claim Case No.966 of 1999.

2. Mr.P.V.Nanavati, learned advocate appearing on behalf of the petitioner states that the order passed on Execution Application on 10-01-2002 is invalid in law in light of the subsequent developments that the Claim Petition being 966 of 1999 has been dismissed with costs on 14-02-2002 and the said order has become final by virtue of First Appeal No.2999 of 2000 having been dismissed on 26-02-2002 by a Division Bench of this Court.

3. Mr.R.C.Kakkad, learned advocate appearing on behalf of Respondent Nos.1/1 and 1/2, who are the original claimants submitted that as far as claim under Section 140 of the Act is concerned, it is dehors the main claim petition in light of the provisions of Section 144 of the Act which lays down that Section 140 of the Act shall have overriding effect to the other provisions of the Act. It is furthermore contended that the original award was challenged by way of First Appeal No.7051 of 1999 by the petitioner herein and on 03-05-2000 the said First Appeal was withdrawn by the petitioner and hence the petitioner cannot now be heard to challenge execution of the said award.

4. Section 140(1) of the Act as is relevant for the present purpose reads as under :

140. Liability to pay compensation in certain cases on the principle of no fault. - (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to any compensation in respect of such death or disablement in accordance with the provisions of this section."

On plain reading of the provisions it is apparent that the claim as to compensation is relatable to death or permanent disablement of any person which has resulted from an accident arising out of the use of a motor vehicle.

5. Section 166 of the Act which provides for an application for compensation stipulates under sub-section (1) that the application shall be in relation to an

accident of the nature specified in sub-section (1) of Section 165 of the Act.

6. Section 165(1) of the Act as is necessary for the present purpose is as under :

165. Claims Tribunals. - (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Here again it is apparent that the Claim Tribunal is set up for the purpose of adjudication of claims for compensation in respect of accidents arising out of the use of Motor Vehicles.

7. Thus, on a conjoint reading of the aforesaid provisions, it is apparent that the entire machinery is provided for claiming compensation in relation to an accident arising out of the use of a Motor Vehicle and this is a pre-requisite condition for making a claim. In the present case as the facts on record show, as on today, Motor Accidents Claims Tribunal (Auxiliary) at Veraval has categorically recorded the following findings after framing the issue as follows :

7. The following issues have been framed at
Exh.41

1. Whether is proved that the incident occurred on account of rash and negligent driving of motor vehicle i.e. tractor No.GUJ-8532 by the opponent No.2 ?
2. Whether the opponent nos. 1 and 3 are also liable for the claim ?
3. Whether the injury complained of have been sustained in the aforesaid vehicular accident ?
4. To what amount of compensation the applicants are entitled ?

5. What award ?

8. My findings to the above issues are under:-

1. In the negative.

2. In the negative.

3. In the negative.

4. Does not survive.

5. As per final order.

8. This order was challenged by the original claimants vide First Appeal No.2999 of 2000 and on 26-02-2002, the First Appeal was summarily dismissed by a Division Bench of this Court (Coram : Y.B.Bhatt & M.H.Kadri, JJ) confirming the findings recorded by the Motor Accidents Claims Tribunal in its judgement dated 14-02-2002.

9. In light of the aforesaid position, once it is established as a matter of fact, after due consideration of the evidence on record, that the vehicle stated to have been involved in the accident was not involved neither the provisions of Section 140 nor Section 166 of the Act would come into play. Once this position is clear, any award passed under Section 140 of the Act, which would admittedly be at an interim stage, would be non est in law and all consequential proceedings including Darkhast for execution would be bad in law. In these circumstances, the impugned order dated 10-01-2002 is held to be bad in law.

10. This petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

'Bhavesh'